

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
BLUESTONE COAL CORPORATION,	:	
a West Virginia Corporation;	:	Civil Action
and	:	
DOUBLE-BONUS MINING COMPANY,	:	No. 2:16-cv-060908
A West Virginia Corporation,	:	
 Plaintiffs,	 :	
	:	
v.	:	
	:	Date: October 3, 2018
PINNACLE MINING COMPANY, LLC.,	:	
a Delaware Corporation;	:	
and TARGET DRILLING, INC., a	:	
Pennsylvania Corporation;	:	
SENECA COAL RESOURCES,	:	
LLC, a Delaware Limited	:	
Liability Company;	:	
SENECA NORTH AMERICAN COAL,	:	
LLC, (SNAC), a Delaware	:	
Limited Liability Company;	:	
CLIFFS NATURAL RESOURCES,	:	
INC., an Ohio Corporation;	:	
TAM INTERNATIONAL, INC., a	:	
Delaware Corporation; and	:	
C&J Well Services, Inc., a	:	
foreign corporation licensed	:	
to do business in	:	
West Virginia under the trade	:	
name of C&J Energy Services,	:	
	:	
Defendants.	:	
	x	

TRANSCRIPT OF SETTLEMENT CONFERENCE HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

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Court Reporter:

Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E.
2 Johnston, Chief Judge, United States District Court,
3 Southern District of West Virginia, in Charleston, West
4 Virginia, on October 3, 2018, as follows:

5 THE COURT: All right. This is a
6 continuation of the brief proceeding we had yesterday
7 morning in Bluestone versus Pinnacle and others. I am
8 pleased to place on the record the fact that, after much
9 hard work on the part of everybody, we have arrived at a
10 settlement.

11 And who will be placing -- spreading the settlement
12 terms upon the record? Have you all talked about that?

13 MR. NELSON: No, sir.

14 MR. BERMAN: I --

15 THE COURT: I'm looking at Mr. Berman.

16 MR. BERMAN: Yes, Your Honor. I think that would
17 be me. I will try to recite it all accurately.

18 THE COURT: Well, and --

19 MR. BERMAN: But --

20 THE COURT: Everybody else will have the
21 opportunity to make any additions or corrections.

22 MR. BERMAN: Okay. In that event, Judge, in
23 exchange for full releases in both directions, the
24 defendants have agreed to pay -- to make an aggregate
25 payment with some components to be paid over time, as I will

1 describe, of \$12.15 million dollars to Plaintiff Bluestone,
2 as well as to convey certain rights in an area approximate
3 to the Pinnacle mine known as the "four seam". If we need a
4 further description on the record, I will have to ask my
5 client to do that.

6 For its part, Pinnacle will be paying \$1 million
7 dollars at the time the settlement documentation is
8 executed; an additional \$1 million dollars on March 31st,
9 2019; and a final \$2 million dollars on June 30th of 2019.

10 It's my understanding that our co-defendant, Cliffs,
11 will be making a payment simultaneous with the execution of
12 the relevant documentation of \$1 million dollars.

13 It's likewise my understanding that the Zurich insurer
14 will be making a payment of \$1 million dollars, which is its
15 policy limit; that AIG will be making a payment of
16 approximately \$2.9 million -- I think it's \$2.9 -- well, I
17 don't have the number in front of me, which is the balance
18 of its policy; and that Chubb will be making a payment of
19 \$3 million dollars coincident with the execution of the
20 relevant releases in the various directions; and, finally,
21 that Arch will be making a payment, also coincident with the
22 execution of the relevant documentation, of \$250,000.00.

23 I believe that summarizes the terms of the settlement
24 that we've arrived at.

25 THE COURT: There was also \$10,000.00 from Great

1 Midwest.

2 MR. BERMAN: My apologies. Thank you, Judge.

3 THE COURT: All right. Does anybody have any --
4 does Bluestone have any additions or corrections?

5 MR. LONG: The only thing occurs to me, Your
6 Honor, I believe there was, I think, an agreement by Seneca
7 Resources to guarantee the Pinnacle portion.

8 MR. BERMAN: That's right.

9 THE COURT: All right. Does Cliffs have anything
10 to add or --

11 MR. ROSE: Yes, Your Honor. One is that it was
12 represented that the payments would be commensurate with the
13 signing. The settlement payment will be made not when the
14 documents are signed but within a period of time after the
15 settlement documents are signed, just 30 days, but there can
16 be some other time period.

17 MR. BERMAN: Whatever we negotiate, which will be
18 in good faith and consistent with general commercial
19 practice.

20 MR. ROSE: And I also just want to make it clear
21 that nothing in this settlement affects the claims that
22 Cliffs has asserted in the Delaware litigation or that
23 Seneca has asserted in the Delaware litigation. This
24 settlement has nothing to do with Delaware and does not
25 impact any of those claims. Cliffs is reserving its right

1 to recover any amounts relating to this litigation in that
2 litigation.

3 MR. NELSON: Your Honor, just as clarification,
4 Mr. Berman, when he was describing the portion of the
5 settlement having to do with the conveyance of the four seam
6 rights, I note that he indicated "certain rights". We
7 understand the agreement was for all rights that are
8 possessed by the client to the four seam that would be
9 transferred.

10 MR. BERMAN: All rights possessed by my client.
11 There are certain other rights relative. We're not the
12 owner of the land.

13 MR. NELSON: Right. Correct.

14 MR. BERMAN: But we will convey all rights.

15 MR. NELSON: All rights you have regarding the
16 four seam?

17 MR. BERMAN: Right.

18 MR. NELSON: Correct.

19 GOVERNOR JUSTICE: May I say -- may I say
20 something, Judge Johnston?

21 THE COURT: Certainly.

22 GOVERNOR JUSTICE: No, I just -- the -- we all --
23 we all feel like that the four seam is sterilized
24 completely, but we don't know that, but, you know, we -- we
25 agreed, I thought what we agreed to, and I want everyone

1 here to know, you know, I've been at this a long time. I
2 don't have a rabbit up my sleeve or anything like that. I
3 don't know anything about the four seam whatsoever except
4 that -- just what I've been told. But, at some point in
5 time, there could very well be something that is worth
6 something. That's what we negotiated.

7 And it's just that we understand NRP owns the four seam
8 and leases the four seam to Pinnacle, or whomever that body
9 may be, and we also understand that, surely, the mine can't
10 be carried on and jeopardize any of the -- anything that
11 goes on there with the mine. We got all that, and we
12 understand all that. But the way it was read into in the
13 beginning was, it would be a partial release to a partial of
14 the four seam. It needs to be all the four seam that they
15 have, period, but I understand they can't do anything, the
16 NRP.

17 THE COURT: I think that's consistent with
18 everyone's understanding.

19 All right. Anybody else here have anything to --
20 anything to add or contradict what the parties have already
21 indicated under the settlement? Everybody is on the same
22 page? If not, speak now, or forever hold your peace
23 subject, of course, to preparation of documents.

24 All right. Very well.

25 Once again, I want to thank everyone. I know it's

1 been a long couple of days, but I want to thank everyone for
2 their participation and good faith work on getting this case
3 resolved.

4 I will -- one last thing. I will, as is my standard
5 practice in any case that has settled before me, enter a
6 standard dismissal order today which will allow for
7 reopening of the case within 90 days if the wheels come off.

8 Thank you very much. For those of you who are
9 traveling, safe travels.

10 (Proceedings concluded at 1:59 p.m., October 3, 2018.)

11
12 CERTIFICATION:

13 I, Ayme A. Cochran, Official Court Reporter, certify
14 that the foregoing is a correct transcript from the record
15 of proceedings in the matter of Bluestone Coal Corp., et
16 al., Plaintiffs v. Pinnacle Mining Company, et al.,
17 Defendants, Civil Action No. 2:16-cv-06098, as reported on
18 October 3, 2018.

19
20 s/Ayme A. Cochran, RMR, CRR

October 18, 2018

21 Ayme A. Cochran, RMR, CRR

DATE